



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Order 99-8-24

Issued by the Department of Transportation
on the 27th day of August, 1999

Served: August 27, 1999

UNITED STATES-FRANCE COMBINATION
SERVICES PROCEEDING

Docket OST-99-5714 - 151

ORDER TO SHOW CAUSE

Summary

By this order, we tentatively allocate seven weekly **frequencies** to Delta Air Lines, Inc. for its proposed New York-Lyon services and seven weekly frequencies to American Airlines, Inc. for its proposed services in the New York-Paris and/or the **Dallas/Ft. Worth-Paris** market.

We will afford interested parties ten calendar days to file objections to our tentative **findings** and conclusions and five calendar days to file answers to any objections filed.

Background

The 1998 Air Transport Agreement (Agreement) between the United States and France provides for substantial growth in transatlantic air service. With respect to combination services, the Agreement provides that during the period April 1998 through April 2002, the airlines designated for combination services collectively may operate up to 63 additional weekly frequencies in the market. Of these 63 frequencies, a total of 28 became available in 1998 and 1999, and they were allocated by Orders 98-S-8 and 98-1 1-19. ¹ Under the Agreement, 14 additional weekly frequencies become available for U.S. carrier services in April 2000.²

By Notice, served May 24, 1999, the Department invited all U.S. carriers interested in making use of additional new frequencies available for April 2000 to file applications by June 14, 1999, with answers due June 24, 1999, and replies due July 1, 1999.

¹ Present frequency allocations are as follows: American-42; Continental-2 1; Delta-28; Northwest-7; Tower-8; TWA- 14; United-3 5; and **USAir-2 1**.

² References to April of a given year mean that opportunities will be available from the first day of the International Air Transport Association (IATA) summer traffic season, which is normally the last week of March.

Applications and Responsive Pleadings

Three U.S. **carriers** -- American Airlines, Inc., Delta Air Lines, **Inc.**, and Tower Air, **Inc.** -- filed requests for the available frequencies.

American seeks fourteen weekly frequencies to operate additional daily flights in both the **Dallas/Ft. Worth-Paris (CDG)** and New York (**JFK**)- Paris (CDG) markets. American proposes to use 207-seat B-767-300ER aircraft for year-round services, beginning April 1, 2000.

Delta seeks fourteen weekly frequencies to operate additional daily service in the Atlanta-Paris (CDG) market and to institute new daily service in the New York (**JFK**)-**Lyon** market, proposing seven weekly frequencies in each market. Delta proposes to use **195-seat** B-767-300ER aircraft for year-round services, beginning April 1, 2000.

Tower seeks two weekly frequencies to operate two weekly flights in the Los Angeles-Paris and/or Miami-Paris markets. Tower proposes to use 472-seat B747 aircraft for seasonal services beginning May 15, 2000.³

Each of the applicants submitted answers and replies to the other **applications**.⁴ The Port Authority of New York and New Jersey and Aderly-The Lyon Area Economic Development Agency also submitted replies.⁵

American argues that it is limited to a single, daily flight from the **Dallas/Ft. Worth** and New York gateways and that growing demand requires additional frequencies in each market. It maintains that Delta should receive no further frequencies in light of its recently announced alliance with Air France, a carrier that is not precluded from adding multiple daily flights between Paris and Atlanta. American further argues that the Department has noted that Paris is the preferred destination for U.S. travelers and, thus, that Delta should not be allocated frequencies for New York-Lyon service until other carrier requests to serve Paris are satisfied.

Delta argues that, while its proposed first nonstop New York-Lyon service and second daily Atlanta-Paris service would provide the greatest possible combination of public benefits, it recognizes that the Department is unlikely to concentrate all of the available frequencies to benefit a single carrier. Thus, Delta suggests that the Department award seven frequencies to Delta for New York-Lyon services and seven frequencies to American for American's first priority gateway service. Delta maintains that its Lyon proposal is the only new nonstop service proposal in the proceeding and that such service would link JFK, the largest U.S. and most important gateway to France, with Lyon, a large, growing regional city and provincial capital.

³ Tower does not specify the exact dates for its seasonal service; rather it states that "as with its scheduled service to all destinations, both domestic and foreign, Tower will operate more weekly flights during peak and shoulder seasons than during other times of the year." (Application at 2, n. 1)

⁴ Tower's reply was filed accompanied by a motion for leave to file. Since the Notice requesting applications provided for the filing of replies, we will dismiss Tower's motion as moot and will accept its reply as provided for under **the** Notice.

⁵ On July 14, 1999, the Port Authority of New Jersey and New York supplemented its reply to incorporate a letter of support for American and Delta from the President of the New York City Economic Development Corporation. In addition, numerous French civic and business concerns submitted letters supporting Delta's Lyon proposal.

Delta argues that it needs frequencies to operate additional France service in its own right and that all of the frequencies should not go to benefit American, which holds the largest number of U.S.-France **frequencies**.

Tower argues that of the available 14 frequencies, the Department should award Tower the two frequencies that it requests to enable it to compete in the market. Tower maintains that should the Department give all the frequencies to American or Delta, the frequencies would not be used to maximize competition. Tower **further** argues that Delta will have access to almost 200 additional U.S.-France frequencies every week, thereby obviating any possible need for Delta to operate the two flights that Tower seeks in this proceeding. Tower further states that small, **low-cost** airlines cannot operate like the “**mega** carriers” and cannot afford to initiate service to a new gateway on a daily basis or sustain continuing losses during slower winter traffic months like **mega** carriers.

American and Delta urge the Department to reject Tower’s application. American argues that Tower failed to identify the specific market to be served as well as the period of year for its proposed operations. Delta argues that Tower’s proposal consists of charter-like service that could readily be accommodated under the charter regime provided for in the U.S.-France aviation agreement. Moreover, Delta argues that Tower has a history of wasting valuable U.S.-France frequencies and that the Department must **carefully** weigh the balance of public benefits of allocating valuable frequencies to a carrier that plans to use them for only one or two weekly flights on a seasonal basis on routes that already receive multiple daily flights when other carriers are prepared to use fully all the frequencies to establish full patterns of year-round service.

The Port Authority of New York and New Jersey (The Port Authority) maintains that awarding Delta and American authority to inaugurate New York-Lyon and to expand New York-Paris service will enhance competition in the U.S.-France market. The Port Authority notes close ties between New York and Lyon through pharmaceutical and automotive industries as well as through tourism and hotel industries.

Aderly, The Lyon Area Economic Development Agency (Aderly), supports Delta’s application for New York-Lyon service. Such service, Aderly states, represents one of the most important commercial opportunities of the Lyon region in recent history. It notes that Lyon is the capital of the Rhone-Alpes Region, the second largest in France, and is a city that is at the center of an extensive transportation network along one of the main north-south European trade routes. Moreover, Aderly notes that several American companies have chosen Lyon as a base for their European operations. Aderly contends that with the current connecting-only services to Lyon, a full day of work is lost in connecting times.

Tentative Decision

We have tentatively decided to allocate Delta seven weekly frequencies for its proposed New York-Lyon service and American seven weekly frequencies for use in either its New York-Paris (CDG) or **Dallas/Ft. Worth** (CDG) markets.

The 1998 U.S.-France transitional agreement created a significant opportunity to expand U.S. carrier services in the U.S.-France market. Under the agreement, U.S. carriers can operate an

additional 63 weekly frequencies over a five-year period. In the initial stages of the transitional period we recognized that the restrictions on U.S. carrier services before the new agreement had resulted in a **pent-up demand** for service, **particularly** in the U.S.-Paris market. We used the available frequencies during the first two years of the transitional period to address those concerns by authorizing new and expanded services in the U.S.-Paris market. US Airways has commenced new service in the Pittsburgh-Paris market, American has inaugurated service in the Los Angeles-Paris market, and US Airways and United Airlines have expanded services at their Philadelphia (US Airways), Washington and Chicago (United) hubs. Fifteen U.S. cities throughout all regions of the United States now have nonstop service to Paris.

The 14 weekly frequencies available during the third year of the transitional period provide a further opportunity to expand services in the U.S.-France market. While we have focused our previous allocations on expanding U.S.-Paris services and tentatively see a basis for using some of the available frequencies to permit additional expansion here, we recognize at the same time that there is also demand for services in other U.S.-France city pairs and that consumers would benefit from the convenience and efficiency of having direct access to other destinations in France. Therefore, we tentatively conclude that the public interest would be best served by using the additional 14 weekly frequencies to address both of these service objectives and, thus, expand the range of service options available to travelers and shippers.

Having carefully reviewed the applications before us, we believe that these objectives are best met by allocating seven of the frequencies to American to increase its U.S.-Paris service and seven to Delta to inaugurate service in the New York-Lyon market. We tentatively conclude that these combined awards will provide the greatest service and competitive benefits by expanding U.S.-Paris services, introducing service in a new U.S.-France market, and ensuring **full** use of the valuable service rights under the transitional service regime.

The expansion of American's Paris services would improve service in the chosen local markets as well as many interior points in the U.S. that use these cities as a gateway to Paris and will further expand service in the U.S.-Paris market. We propose to authorize American to use the frequencies at both New York and **Dallas/Ft. Worth**, affording it the flexibility to increase its service in either market, or both as demand warrants. Delta's proposed New York-Lyon service will afford consumers service in a new U.S.-France market, making it possible to travel between the U.S. and another important French city without a connection at Paris or another European city. While American questions the need for nonstop New York-Lyon service, we tentatively regard the public benefits of such services as sufficiently persuasive to justify providing consumers with the opportunity to reap the benefits in terms of greater convenience and substantially improved elapsed times. We note that Delta has already introduced nonstop service in the New York-Nice regional market and has been operating that service for a number of years. Now, the expansion of regional service to another French city will again provide valuable new options to travelers in the U.S.-France market.

We further tentatively conclude that this proposed allocation provides greater public benefits than allocating all of the frequencies to American, as American has argued. While an award of all of the flights to American would increase service in the U.S.-Paris market and thus provide significant public benefits, it would foreclose the opportunity for service in other U.S.-France markets. We continue to believe that expansion of Paris services is important and, indeed, by our

proposed decision here, we have ensured that Paris services will continue to grow. However, given the level of services now provided in the U.S.-Paris market, nearly 170 weekly flights, we believe that the **public** interest is better **served** by allocating the frequencies in a manner that benefits a broader range of service needs. We tentatively conclude that our proposed decision here properly balances these considerations.⁶

In reaching this tentative decision, we have also carefully considered Tower's proposal and its arguments for an award in this case. We agree with Tower that the competitive mix of different types of carrier services provides valuable benefits to consumers by increasing the choice of aircraft, price, and city-pair services available. **Our** new agreement with France ultimately will provide full flexibility for airlines to serve the market in city pairs and at service levels of their choice. In the meantime, while frequencies remain limited, we must balance the benefits that will result from our allocation of the limited rights available. In this case, we are not persuaded that the benefits of an award to Tower would exceed those deriving from the awards we are proposing. On the one hand, granting Tower the two additional frequencies that it seeks would add an additional service option in markets that now receive multiple daily flights by both U.S. airlines and Air France, enhancing competition in these markets. On the other hand, Tower would offer these services on a less-than-daily basis during only a portion of the year. Moreover, an award to Tower would deny the public the benefit of two additional daily U.S.-France services, including service in a market that does not now have nonstop service. In these circumstances, we are not persuaded that, on balance, the public benefits of Tower's seasonal expansion of weekly services proposed here outweigh the service and competitive benefits that would result **from** the addition of two new daily services operated on a year-round basis proposed by the other applicants in this case.

Finally, we are not persuaded by American's structural arguments against an award to Delta. The crux of American's argument is that Delta should be excluded from awards in the transitional period because Delta has a code-share arrangement with Air France that affords it additional access to the U.S.-France market. While we have certainly taken note of the Delta/Air France relationship, we have not regarded it as controlling here. Delta, in its proposal, would provide this service with its own aircraft. We have tentatively found that the public interest favors expanding the service opportunities available to consumers in the U.S.-France market to destinations other than Paris. Delta is the only applicant in this case that has proposed such service. The record shows that Delta's proposal would provide significant public benefits. It also shows that these benefits would outweigh any potentially adverse consequences of improving Delta's position in the market, as alleged by American. We do not see an award of seven frequencies to each **carrier** as likely to have a significant impact on the respective competitive positions of either carrier or on overall competition in the market.

Consistent with our standard practice, we have also tentatively decided that the U.S.-France combination service frequency allocations should be subject to our standard **90-day** dormancy

⁶ While Delta had also requested all 14 frequencies, it has stated that it would accept an award of 7 of the available frequencies. In light of our proposed decision here, we need not address Delta's arguments for an award of all of the available frequencies.

condition, wherein frequencies will be deemed dormant if they are not operated for 90 days.⁷ Under the dormancy condition if flights allocated are not used in the markets authorized for 90 days, the frequency allocations would expire automatically, and the **frequencies** would revert to the Department for reallocation so they will be available for other carriers on an immediate basis should they seek to use them. The initial 90 days would run from April 1, 2000, the proposed startup date for the two carriers' operations.

We will require that any objections to our tentative decisions be filed within ten days of the date of service of this order, and that answers to any such objections be filed within five calendar days thereafter.⁸

ACCORDINGLY,

1. We tentatively allocate the 14 weekly frequencies available April 1, 2000, for U.S.-France services as follows: 7 weekly frequencies to Delta Air Lines, Inc. for services in the New York-Lyon market and 7 weekly frequencies to American Airlines, Inc. for services in the New York-Paris or **Dallas/Ft. Worth**-Paris market, or both;
2. We direct all interested parties to show cause why we should not issue an order making the proposed allocations, as conditioned, final;
3. Any interested parties having objections to our tentative decisions as set forth in this order should file their objections with the Department's Docket Section (in Docket **OST-99-5714**), 400 Seventh Street SW, Room PL-401, Washington DC, no later than ten days from **the** date of service of this order; answers thereto shall be filed no later than five calendar days thereafter;
4. If timely and properly supported objections are filed, we will afford further consideration to the matters or issues raised by the objections before we take further **action**;⁹
5. If no objections are filed, we will deem all further procedural steps to have been waived, and will finalize the actions proposed in this order;
6. We dismiss, as moot, the motion of Tower Air, Inc. for leave to file; and
7. We will serve this order on American Airlines, Inc.; Delta Air Lines, Inc.; Tower Air, Inc.; The Port Authority of New York and New Jersey; Aderly, The Lyon Area Economic Development Agency; the President, New York City Economic Development Corporation;

⁷ Since both carriers have proposed year-round operations, we will not include the standard proviso on these frequencies regarding seasonal service.

⁸ The original filing of any comment, objection, or answer should be on 8½"x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system. **In** the alternative, filers may use the electronic submission capability available through the Dockets DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site.

⁹ Since we have provided for objections to our tentative decision, we will not entertain petitions for reconsideration of this order.

the Ambassador of the French Republic in Washington DC; the United States Department of State (**Office** of Aviation Negotiations); and the Federal Aviation Administration.

By:

A. BRADLEY MIMS

Acting Assistant Secretary for
Aviation and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*